



**MINUTES OF THE
LAND RECLAMATION COMMISSION
TELECONFERENCE MEETING**

December 17, 2004

Chairman Jim DiPardo called the meeting to order at 10:30 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Jim DiPardo; Mimi Garstang; Jim Hull; Dr. Gregory Haddock; and Hugh Jenkins; and Nick Matherly.

Staff Present: Larry Coen; Mike Larsen; Richard O'Dell; and Shirley Grantham.

Others Present: Rich AuBuchon, Attorney General's Office.

1. INDUSTRIAL MINERALS

Orders of Rulemaking - House Bill 453 Rules (Attachment 1)

Mr. Larsen stated for the Commission's consideration today are eight Orders of Rulemaking. A formal hearing was held on these rules on November 17, 2004; and as a result of that hearing, the Commission heard comments relating to the rules at 10 CSR 40-10.020 and 10 CSR 40-10.080. After hearing those comments, the Commission did order the staff to revise the Proposed Rules. Those revisions to the rules have been made. The changes reflect the comments that were made at the November public hearing, and it is felt that all eight rules are ready to go to the Order of Rulemaking phase. Therefore, it is the staff's recommendation that the Commission formally adopt all eight Proposed Rules and thus move forward with the Orders of Rulemaking. It is projected that the effective date of these Proposed Rules will be May 1, 2005. This is the last action the Commission needs to take on this rulemaking package. The staff will take the necessary steps to process these Orders of Rulemaking to their effective date.

Ms. Garstang asked whether there has been any confirmation from the commenters on these rules that the changes have been made as requested?

Mr. Larsen stated when the Commission was sent this information, he also sent copies of the Orders to the two commenters. There have been no further comments, as the parties feel the proper changes have been made with regard to their comments. The parties were also invited to attend this meeting, but declined.

Dr. Haddock made the motion that the Commission follow the staff's recommendation and adopt the Orders of Rulemaking per House Bill 453. Mr. Hull seconded; no dissention was noted. Motion carried

Referral for Injunctive Relief - Robert Servaes Construction & Quarry (Attachment 2). Mr. O'Dell stated the company had previously held a permit with the Land Reclamation Program to allow commercial mining of limestone at their Site #1 in Buchanan County. On March 8, 2004, the company informed the Program that they would no longer be commercially mining limestone at that site and that only a limited amount of mining was going to continue for personal use. The company then applied for a bond release based on this information. On April 1, 2004, the complete bond release was approved for this company based upon the personal use information provided.

Mr. O'Dell stated that on September 8, 2004, the staff received a complaint that this company was selling limestone without a permit. He conducted an inspection of the site on October 19, 2004, and met with Mr. Servaes at that time. When the operator was asked if he had been selling rock, he stated that he had only been crushing and using rock for personal use and had not sold any since before he received his bond release in April 2004. The operator was informed that he must have a permit prior to selling any rock from the site. The operator stated he had no intention of selling any rock and that he knew he had to have a permit if he was going to sell anything. Mr. O'Dell noted there was a newer crusher in place on the site since the last inspection in March 2004. The operator stated he had just gotten it and was just playing around with it. There were several piles of sized crushed stone and shot rock on the site. The operator showed Mr. O'Dell some rock that he had placed on his driveway and stated he was getting ready to use the rest of the processed rock on his driveway.

Mr. O'Dell stated that on November 10, 2004, he spoke with a lady from the Buchanan County Highway Department. During the conversation, she stated that the County had bought processed limestone from Mr. Servaes on numerous occasions since March 2004. On November 16, 2004, the Program received copies of bills from the Buchanan County Highway Department for rock that was purchased from the Robert Servaes Quarry on April 22 and June 23, 2004. On November 19, 2004, the Program received another complaint that Mr. Servaes had been selling limestone to private individuals near the company's site. On December 2, 2004, the Program received a copy of a bill from the Buchanan County Highway Department for rock that was purchased from Mr. Servaes on November 4, 2004. On December 13, 2004, Mr. O'Dell stated he received a new rock bid summary where Mr. Servaes had bid out rock for the calendar year 2005 to the Buchanan County Highway Department.

Mr. O'Dell stated that, as of this date, Robert Servaes Construction & Quarry no longer has a permit to commercially mine limestone and no application to reinstate the permit has been received. The statute states that "...if an investigation shows that surface mining is being or is going to be conducted without a permit...and the commission has not issued a variance, the commission shall request the attorney general to file suit in the

name of the state of Missouri for an injunction and civil penalties not to exceed one thousand dollars per day for each day the violation has occurred...."

Mr. O'Dell stated that, therefore, because this operator has been investigated and found to be operating a commercial limestone mining operation without a permit, the staff recommends the Commission refer this matter to the Attorney General's Office for injunctive relief.

Mr. DiPardo asked if the fine went into effect from the date the operator gave up his bond release?

Mr. Larsen stated that was his understanding. The operator was permitted until April 1, 2004, yet, continued to operate after that date. He indicated that the staff would be requesting civil penalties from April 1, 2004, until today or until a permit is applied for or obtained.

Mr. DiPardo asked, if the Commission approves this recommendation today, when will it take effect? Will this operator be continuing to mine and sell rock without a permit until the Attorney General notifies him or would this happen fairly quickly?

Mr. AuBuchon stated this particular case will be handled in an expedited manner. His office has the referral ready and waiting for the Commission's decision. He thought a lawsuit would be filed sometime next week, assuming the Commission decides to go forward.

Mr. DiPardo asked what would happen then--would there be a court order?

Mr. AuBuchon stated the standard procedure would be to seek a temporary injunction which would last a period of up to ten days without a hearing. The court would then instruct the sheriff to execute the injunction, and if the operator disobeyed the injunction, he could be thrown in jail or fined for civil contempt--it would be up to the judge. These are the types of matters that shouldn't receive an injunction from a court. After a temporary injunction is issued, a preliminary injunction hearing is held, at which time the operator would have the opportunity, as well as at the temporary injunction hearing, to put forth any evidence that he might have as to why he is in compliance or is not in compliance with the law. At that time, the judge would either enter or decide not to enter permanent injunction against the operator. After that period of time, assuming that an injunction is entered, the court would then set a trial date for damages and/or the case in chief. If the court enters an injunction, the court would then set a hearing to decide, in the current case, whether Mr. Servaes was truly in violation of the law, and if he were found to be in violation of the law, would enter final judgment, probably six months from now.

Mr. DiPardo asked how long was Mr. Servaes in operation?

Mr. Larsen stated the operator has had a Land Reclamation Program permit for approximately the last 2-3 years up to April of 2004 when he explained he was going to be mining for his personal use only. Mr. Larsen noted Mr. Servaes is a rather large landowner, and the road to his property is very very long.

Mr. DiPardo asked once this case would be turned over to the Attorney General's Office, can the operator come to the Commission and plead his case, or is it strictly in the hands of the Attorney General?

Mr. AuBuchon stated that once it has been referred to the Attorney General's Office, it would be handled by it. If the operator were to seek a permit and be granted a permit in the future, then he would have the rights that would be granted to any other permittee, which would include the right to come back to the Commission. After a referral to the Attorney General's Office, it would be handled just like any other civil litigation and would be taken out of the hands of the Commission.

Ms. Garstang asked if this operator was aware that the Program has proof that he has been selling rock?

Mr. O'Dell stated he has not shown any of his proof to the operator. The operator was sent a letter informing him that he had a matter on the agenda for today for a referral to the Attorney General's Office for operating a commercial limestone mining operation without a permit. The operator has not contacted the Program.

Mr. O'Dell stated he had talked with the Buchanan County Highway Department, and they are aware that Mr. Servaes is an illegal operator and they have ceased purchasing rock from him. They were going to inform the operator also.

Dr. Haddock made the motion that due to the fact that this operator has been investigated and found to be operating a commercial limestone mining operation without a permit, that the Commission act on the staff's recommendation and order that this matter be referred to the Attorney General's Office for injunctive relief. Mr. Hull seconded; no dissention was noted. Motion carried.

2. OTHER BUSINESS

3. ADJOURNMENT

Dr. Haddock made the motion to adjourn the meeting. Ms. Garstang seconded; motion carried.

The meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Chairman